



CHAIRMAN

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 9, 2000

Honorable Edward J. Markey
United States House of Representatives
Washington, D.C. 20515-2017

Dear Congressman Markey:

I am responding to your letter of February 4, 2000, concerning the U.S. Nuclear Regulatory Commission's (NRC's) new security program to replace the Operational Safeguards Response Evaluation (OSRE) program. The Commission understands your concerns and we are committed to instituting a security program that is consistent with the agency's mission of protecting public health and safety.

As you stated, the staff is engaged in a comprehensive review of 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage." This review goes beyond finding a replacement for OSREs, which represented the performance evaluation aspect of the NRC's security oversight program. The staff's review of 10 CFR 73.55 has a broader goal of revising and risk-informing the entire security regulatory program for nuclear power reactors. This process is expected to take three years to complete and is intended to result in a new program that will provide a high level of assurance of protection against the design basis threat (DBT) for radiological sabotage. The staff has a near-term task of defining radiological sabotage for nuclear power reactors and setting the standards for acceptable performance in licensee security programs. The staff is preparing a position paper on these issues and is expected to forward its recommendations to the Commission later this month.

The last OSRE in the current cycle is scheduled for May 2000. Since the final rule is not expected to be published for three years, the staff has taken steps to fill in the gap between May 2000 and the time when the new rule is in place. The NRC staff has reviewed and publicly commented on an industry proposal for a Self-Assessment Program (SAP), to which you referred in your letter. The SAP is planned to be used to fill the gap between the end of the OSRE cycle and the implementation of the new rule, as well as to pilot new concepts for security regulations being considered by the staff. Not until revisions to the SAP are completed to the satisfaction of the NRC, including plans for an adequate number of force-on-force exercises, will the SAP be instituted. Until the industry completes these revisions, which are expected in mid- to late-summer 2000, the NRC staff plans to continue OSRE visits to ensure that there is no gap in testing. In response to your question, we intend to continue the use of contractors while the traditional OSRE process remains in place. As for the role of the NRC in the SAP, the oversight of licensee programs will continue. To this end, we plan to continue using a team of NRC regional and headquarters personnel and NRC contractors to conduct inspections to evaluate the licensees' self-assessment programs, including exercises. We will reevaluate the role of contractors in the new rule-based exercise plan.

As for assuring that noncompliances with requirements of the SAP are appropriately addressed, the industry's proposed program has a section on corrective action, including a commitment to handle deficiencies through the licensee corrective action program. Under the revised oversight program, the NRC will give heightened attention to licensee corrective action programs. Because the SAP is a self-initiated program, the staff is still considering appropriate enforcement options. It is important to note that NRC will continue to ensure compliance with the existing physical protection and safeguards requirements through the baseline inspection program. The SAP is in addition to, not in lieu of, the NRC baseline inspection program.

The Commission has not yet decided on a definition of radiological sabotage, or the criteria upon which the definition may be based. As part of determining how radiological sabotage could affect the environment and public health and safety, the staff has been considering various options, including the use of 10 CFR Part 100 criteria as proposed by industry, in the definition to ensure that the new rule being developed for the Commission's consideration will be based on appropriate criteria. No decisions have yet been made.

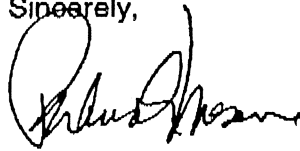
You expressed a concern that not all elements of the NRC DBT for radiological sabotage are tested in OSRE exercises, specifically referring to the failure to use an active insider and a vehicle bomb as part of the adversary team in exercises. The regulations require licensees to have pre-access screening, employee background investigations, fitness-for-duty testing, and behavioral observation by supervisors to provide protection against potential threats from insiders. In addition, the regulations require a vehicle barrier system to protect against vehicle bombs. These programs and systems are inspected in the course of the NRC's oversight process. The OSRE exercises serve to complement this effort, and are designed to assess the licensees' capability to respond to threats from external adversaries. While the primary focus of the OSRE is the external threat, the manner in which an OSRE is initiated at a site replicates the type of valuable information that could be provided by the passive insider. This is accomplished through briefings provided by the licensee which reveal in advance the defensive strategies of their response force and by conducting a tour of their protected and vital areas to include the location of vital equipment. As part of a risk-informed review of 10 CFR 73.55, including the industry's proposed self-assessment program, the staff will continue to evaluate methods to address protection against the active insider threat.

In response to your question about the role other agencies such as the Federal Bureau of Investigation or Federal Emergency Management Agency (FEMA) play in defining the DBT, the NRC staff works closely with the FBI Weapons of Mass Destruction Operations Unit (WMDOU), and the Domestic Terrorism Unit (DTU). The NRC staff routinely interacts with the Department of Energy (DOE), the Central Intelligence Agency, the Bureau of Alcohol, Tobacco and Firearms, the Defense Intelligence Agency, U.S. Customs, and other members of the Interagency Intelligence Committee on Terrorism, of which NRC is a member and an active participant. NRC relies on these agencies to provide threat-related information on a daily basis for the NRC staff's use in determining the continuing validity of the DBT, responding to specific threats to NRC licensed facilities, and assessing the domestic threat environment. Currently the DBT and the definition of radiological sabotage are the responsibility of the NRC and the organizations referred to above will continue to function in the same advisory roles, as they do at the present time. With regard to your question regarding the role of the Department of Defense (DOD) in the Nuclear Energy Institute's (NEI's) pilot program, we are not aware of any DOD role in NEI's commercial nuclear activities.

The NRC staff formally assesses the threat environment and validity of the DBT twice a year and consults with the Commission on the results of the assessment. The NRC staff, however, reviews incoming intelligence from both classified and unclassified sources on a daily basis to continually validate the DBT. In addition if an imminent or near-term threat is identified, a threat advisory would be issued to the licensees through the NRC Information Assessment Team, in coordination with the FBI and DOE. Any proposed change to the DBT attributes would be based on extensive trend analyses of actual terrorist and other criminal characteristics that could reasonably be expected in an adversary on the basis of experienced analytical judgment and intelligence community assessments. In response to your question regarding the frequency of threats to NRC-licensed activities, we have received no significant threats since the one mentioned in our response to your letter of November 11, 1998.

In summary, based upon our overall assessment of licensee performance, the Commission continues to believe that existing licensed activity programs are adequate to protect against the DBTs for radiological sabotage and theft and diversion of strategic special nuclear material. If you have further questions on these issues, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Meserve", written over a horizontal line.

Richard A. Meserve

[Attachments are on file in Representative Markey's office or are available on the NRC website at www.nrc.gov.]

Question 4. The article mentions a memo from several NRC security officials and written objections to the program elimination by eleven NRC inspection officials. Please provide the memo, all written objections, and the Commission's response to these objections.

Answer

- There were two Differing Professional Views (DPVs) filed regarding the decision to cancel the OSRE program. Another memo was co-signed by nine NRC employees (including three of those who co-signed one of the DPVs) in support of the first DPV. A panel was convened to review the issues raised in the DPV and final recommendations were provided in the panel's report dated November 4, 1998. To follow up on this activity, the Director of the Office of Nuclear Reactor Regulation issued a memorandum to the staff, dated December 11, 1998, adopting the panel's recommendations and tasking the staff to carry them out, with the exception of the recommendation to terminate OSRE. A task force made up of Headquarters and regional security specialists, including some of the individuals who had filed DPVs, was formed to look into the question of performance assessment in safeguards, and the staff prepared programmatic recommendations that were forwarded to the Commission on January 22, 1999 (SECY-99-024, attached). The DPVs, the supporting memorandum, the panel report, the Director's tasking memorandum, and the task force's recommendations are attached. The Commission's formal response to these issues will be made public upon completion of its deliberations on SECY-99-024.
- On February 12, 1999, the Commission was notified of another DPO on this subject in response to SECY-99-024. A copy is attached for your information. We will follow up any additional issues raised in this DPO.

Attachments:

1. DPVs (2)
2. Supporting Memorandum
3. Panel Report
4. Director's Tasking Memorandum
5. SECY-99-024, Recommendations of the Safeguards Performance Assessment Task Force, January 22, 1999
6. DPO

In addition to the above, the November 10, 1998 letter from Congressman Markey also requested the following:

Please enclose a copy of NRC Information Notice 98-35 dated September 4, 1998, "Threat Assessments and Consideration of Heightened Physical Protection Measures," as well as any reports, memoranda, "Differing Professional Views," or other correspondence from NRC staff or contractors concerning the elimination of the anti-terrorist program.

Answer

- A copy of the unclassified version of Information Notice 98-035 is attached. Copies of the Differing Professional Views are attached with Question 4.

Attachment:
IN 98-35

The new reactor oversight process will enhance the ability of the agency and licensees to focus on safety-significant issues to ensure they are corrected before more substantial safety performance problems result. The process will provide access to clear, understandable plant performance data as well as clearly defined thresholds which will result in regulatory action. The new oversight process will provide the NRC, as well as its stakeholders and the public, with more timely and objective data, helping them make better decisions and assuring more safety-focused regulation designed to protect the public health and safety. Plant performance and inspection data will be updated quarterly and made available to the public on the NRC's external Web site as well as in the Public Document Room. Finally, the new process clearly defines the degree and extent of regulatory action.

The new oversight process is currently being tested at nine plants as part of a pilot program that began in June 1999. The results of the pilot program will be evaluated and the revised reactor oversight process will be modified to reflect lessons learned.

In an effort to include stakeholder concerns in the development of our new initiative we enlisted public participation at each stage of the change process. State regulators, public interest groups, and the industry continue to participate in public meetings and workshops to help define our new process. Representatives from these groups will be part of a pilot program oversight evaluation advisory panel, which is integral to the assessment of the new program. We are holding public meetings in the vicinity of each pilot program site in order to inform local stakeholders and to gain their insights. State regulators have been invited to and have attended inspector training sessions on the new process. In fact, in the future, we anticipate more frequent public meetings and more frequent public communication as a result of implementing the new oversight process.

We have enclosed a copy of our publication, "New NRC Reactor Inspection and Oversight Program (NUREG-1649, Rev. 1)," which briefly discusses the new process. We hope this publication will help you in gaining a better understanding of this new initiative. The NRC staff is available to meet with you or your staff to provide additional information on the revised reactor oversight process and other initiatives we have under development.

Sincerely,

A handwritten signature in cursive script, reading "Shirley Ann Jackson".

Shirley Ann Jackson

Enclosure: As stated